

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

LAIDLAW EDUCATION SERVICES

Employer

and

SOUTHERN SCHOOL BUS DRIVERS  
ASSOCIATION

Petitioner

**Case 6-RC-12457**

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Laidlaw Education Services, operates a transportation services company with a facility in Venetia, Pennsylvania, where it employs approximately 95 employees. The Petitioner, Southern School Bus Drivers Association, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of drivers, mechanics and chaperones. The Intervenor, Amalgamated Transit Union, Local 1753, AFL-CIO, is the current collective-bargaining representative of the petitioned-for employees.<sup>1</sup> A hearing officer of the Board held a hearing in this matter.<sup>2</sup>

As evidenced at the hearing, the parties disagree on one issue: whether the Petitioner is a labor organization under Section 2(5) of the Act.

The Petitioner seeks to represent a unit, as amended at the hearing, which is coextensive with the unit represented by the Intervenor, consisting of all full-time and regular

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<sup>1</sup> Amalgamated Transit Union, Local 1753, AFL-CIO, intervened in this proceeding based on its current contract with the Employer. Puerto Rico Marine Management, Inc., 242 NLRB 181 (1979). There is no contract bar issue in this proceeding.

<sup>2</sup> The parties waived the filing of briefs.

part-time drivers, mechanics and chaperones employed by the Employer at its Southern Division, Venetia, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees. While all parties agree as to the appropriateness of the bargaining unit,<sup>3</sup> they disagree as to whether the Petitioner is a labor organization under Section 2(5) of the Act. The Intervenor contends that the Petitioner is not a labor organization within the meaning of the Act, while the Petitioner and the Employer contend that the Petitioner satisfies the statutory requisites of a labor organization. I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I have directed an election in a unit that consists of approximately 95 employees.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's history of collective bargaining. Then, I will present in detail the facts and reasoning that support my conclusion on the issue.

## **I. OVERVIEW OF COLLECTIVE-BARGAINING HISTORY**

The Employer is engaged in interstate and intrastate transportation and has facilities throughout the United States and Canada. Solely involved herein is the Employer's Venetia, Pennsylvania facility.

On November 15, 1989, Amalgamated Transit Union, Local 85, AFL-CIO, was certified as the exclusive collective-bargaining representative of all full-time and regular part-time drivers employed by the Employer at its Southern Division facility.<sup>4</sup> In about 1999, due to an internal reorganization within the Amalgamated Transit Union, Local 1729 replaced Local 85 as the

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<sup>3</sup> It is noted that the current collective-bargaining agreement excludes dispatchers from the bargaining unit and no party contends that dispatchers should be included in the bargaining unit.

<sup>4</sup> At that time, the Southern Division was located in Library, Pennsylvania. It is now located in Venetia, Pennsylvania.

collective-bargaining representative. In about 2001, Local 1753 was granted a separate charter and replaced Local 1729 as the collective-bargaining representative.

The Employer and the Intervenor are parties to a current collective-bargaining agreement, which is effective by its terms from July 1, 2002, through June 30, 2005. This contract covers all full-time and regular part-time drivers, mechanics and chaperones employed at the Venetia facility.

## **II. LABOR ORGANIZATION STATUS**

The record establishes that the Petitioner herein was formed shortly before the instant petition was filed. Thus, around the beginning of April, 2005, certain employees of the Employer met and formed the Petitioner. The Petitioner currently has three officers, a President, a Vice President and a Recording Secretary, who are voluntarily filling these positions. The Petitioner exists to deal with the Employer regarding conditions of work such as grievances, labor disputes, wages and other issues, and to engage in collective bargaining with the Employer.

If the Petitioner is certified as the unit employees' collective-bargaining representative, it intends to register as an unincorporated association with the Pennsylvania Department of State Corporation Bureau. Further, at that time, the Petitioner plans to hold elections for officers. Finally, if certified, the Petitioner plans to engage in collective-bargaining negotiations with the Employer.

Section 2(5) of the Act defines "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

In applying this definition, the Board has made it clear that it is the intent of an organization, and not what it has actually done, which is critical in ascertaining labor organization status. Armco, Inc., 271 NLRB 350 (1984). An organization need not have

previously dealt with the employer on behalf of the employees, or have a formal structure with a constitution and by-laws. Armco, Inc., supra; Butler Manufacturing Company, 167 NLRB 308 (1967). It is sufficient if the organization is one in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers on their behalf with respect to their terms and conditions of employment. Moreover, an organization which fulfills these criteria will be found to be a labor organization where it intends to function in such capacity and to adopt a formal structure if it is certified to represent a particular bargaining unit. Armco, Inc., supra; Advance Industrial Security, Inc., 225 NLRB 151 (1976); Butler Manufacturing Company, supra.

Applying these criteria to the record herein, it is clear that the Petitioner constitutes a labor organization within the meaning of the Act inasmuch as it is an organization in which employees participate and its purpose, indeed its only purpose, is to represent the Employer's unit employees for the purposes of collective bargaining. Based on the above, and the record as a whole, which establishes that the Petitioner meets the statutory requirements of a labor organization, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

### **III. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, mechanics and chaperones employed by the Employer at its Southern Division, Venetia, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

#### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Southern School Bus Drivers Association or Amalgamated Transit Union, Local 1753, AFL-CIO. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **May 12, 2005**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **three (3)** copies, unless the list is submitted

by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

### **V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001.<sup>5</sup> This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **May 19, 2005**. The request may **not** be filed by facsimile.

Dated: May 5, 2005

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

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<sup>5</sup> A request for review may be filed electronically with the Board in Washington, D.C. If a party wishes to file electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).